

**JAGWIRE™ COMMERCIAL OFF THE SHELF SOFTWARE LICENSE  
AGREEMENT**

This **SOFTWARE LICENSE AGREEMENT** (“**Agreement**”) is made and entered into as of \_\_\_\_\_, (“**Effective Date**”) by and between \_\_\_\_\_ (“**LICENSEE**”), with offices at \_\_\_\_\_ and Exelis Visual Information Solutions, Inc., a Colorado corporation (“**Licensor**”) with offices located at 4990 Pearl East Circle, Boulder, Colorado 80301, (individually a “**Party**,” collectively the “**Parties**”).

**NOW THEREFORE**, in consideration of the mutual covenants and conditions contained herein, Licensor agrees to furnish to LICENSEE and LICENSEE agrees to accept, in accordance with DIR Contract No. DIR-TSO-3390 and this Agreement, the use of the Product(s) (as defined below), pursuant to the terms and conditions of DIR Contract No. DIR-TSO-3390 and this Agreement and the schedule(s) (“**Product Schedule(s)**”) attached hereto.

**1. DEFINITIONS.**

- 1.1 “**Applicable Specifications**” means the functional and operational characteristics of the Product as described in the Licensor’s current published documentation, specifications, literature, the written proposals, if any, made by Licensor to LICENSEE, and any additional specifications set forth in the Product Schedule.
- 1.2 “**Disaster**” shall mean an unplanned interruption in (a) LICENSEE’s data processing services; or (b) telecommunications to or from one or more of LICENSEE’s locations that causes the data processing services to stop.
- 1.3 “**Disaster Recovery Computer**” and/or “**Disaster Recovery Computers**” shall mean one or more computers which are used in a Disaster or Disaster recovery exercise/test to run Product(s).
- 1.4 “**Documentation**” means Licensor’s documentation for the Product(s) and is Licensor’s standard documentation provided to the User, the purpose of which is to explain the installation, use, and operation of the Product, in summary and complete forms.
- 1.5 “**Executable Code**” means the machine readable version of the Product.
- 1.6 “**License Fee**” means the fee indicated on the Product Schedule and in accordance with Appendix C of DIR Contract No. DIR-TSO-3390, in exchange for the Licenses granted herein.
- 1.7 “**Licensed Computer**” and “**Licensed Computer(s)**” shall mean one or more central processing units (“CPU”) in a hardware device (including a Server) that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions.
- 1.8 “**Maintenance and Support Fees**” means the fees indicated on the Product Schedule and in accordance with Appendix C of DIR Contract No. DIR-TSO-3390, for the Maintenance and Support Services as provided herein.
- 1.9 “**Operating System**” means software that controls the execution of application programs; an Operating System may provide services such as resource allocation, scheduling, input/output control and data management.
- 1.10 “**Product**” means the Licensor’s commercial off the shelf computer software programs identified in a Product Schedule. Product is not a work for hire and shall not be delivered in a Statement of Work. Delivery of the Product to LICENSEE shall be in Executable Code form. Product shall also include each and every Update Release, Maintenance Release and New Version available from Licensor during the term of each Maintenance and Support Period.
- 1.11 “**Server**” means a computer or device on a network that manages network resources. By way of example and not of limitation, a file server is a computer and storage device dedicated to storing files; a print server is a computer that manages one or more printers, a network server is a computer that manages network traffic; and a database server is a computer system that processes database queries. On multiprocessing

## APPENDIX D TO DIR CONTRACT NO. DIR-TSO-3390

operating systems, a single computer can execute several programs or several instances of a program at once. A server in this case could refer to the program that is managing resources rather than the entire computer.

- 1.12 “**LICENSEE**” shall include one of the following: (a) LICENSEE’s subsidiaries and affiliated companies (“**LICENSEE Affiliates**,” as defined in **Section 1.13**), and their agents, officers, directors, employees, representatives, contractors, successors, and assigns; or (b) a government entity.
- 1.13 “**LICENSEE Affiliates**” means all current business entities that, directly or indirectly, control, are controlled by, or are under common control with LICENSEE. For purposes of this definition only, the term “**control**” is defined as the legal, beneficial, or equitable ownership, directly or indirectly, in such entity.
- 1.14 “**Use**” means loading, running, transacting, installing, initializing, and executing.
- 1.15 “**User**” means either (a) a natural person, or (b) a computer application or process; either of which is authorized to access, use, and receive the benefit of the Product pursuant to this Agreement under the terms authorized in the applicable Product Schedule.

### 2. LICENSE.

- 2.1 **Executable Code License.** For each such Product and subject to the payment of the Executable Code License fee specified herein, Licensor grants to LICENSEE and LICENSEE accepts from Licensor a non-exclusive, perpetual license to the Product in Executable Code form (“**Executable Code License**”), in accordance with the terms of DIR Contract No. DIR-TSO-3390 and this Agreement. In connection therewith, LICENSEE shall also have the following rights:
  - 2.1.1 **Use.** LICENSEE may Use, access, and benefit from the use of the Product in its ordinary course of business as further defined below in such quantity or number of Users, if any, as may be specified in the applicable Product Schedule. LICENSEE may install the Product in any combination, subject to the quantity limitations in the applicable Product Schedule, on (a) one or more servers and permit User access thereto, or (b) individual User workstations.
  - 2.1.2 **Right to Copy User Documentation.** LICENSEE may make a reasonable number of copies of the User Documentation for its internal use only, including, but not limited to duplication for disaster recovery purposes.
  - 2.1.3 **Ordinary Course of Business Use.** LICENSEE is authorized to Use, access, and benefit from the Use of the Product in its ordinary course of business, provided however, that any and all subsidiaries, affiliates, third party subcontractors, and contractors, or divisions of LICENSEE are hereby granted the Use, access, and benefit of the Product by Licensor, at no additional cost, so long as LICENSEE ensures that: (a) the number of Users and/or Concurrent Worker Licenses authorized under the applicable Product Schedule are not exceeded; and (b) no other license restriction is violated.
  - 2.1.4 **Authorized Third Parties.** LICENSEE may exercise the rights granted in this Section either directly or indirectly through the services of its own employees, independent contractors, outsourcing company, hosting company, facilities management company or similar services companies provided that third parties: (a) do not disclose or distribute any part of the Product; (b) maintain the confidentiality of the Product; and (c) do not violate Licensor's proprietary rights in the Product. In no event shall LICENSEE ever enable access to the Product by any third party competitor of Licensor that LICENSEE knows to be a competitor of Licensor.
  - 2.1.5 **General Limitations.** Other than as specifically set forth herein, LICENSEE may not make or distribute copies of the Product; use the Product for commercial network services, interactive cable or remote processing services that provide unlicensed end users with direct access to the Product. LICENSEE must reproduce on any such copy all copyright notices and any other proprietary legends on the original copy of the Product.

Except as otherwise expressly provided under the Agreement, LICENSEE shall have no right, and specifically agrees not to:

- (i) rent, lease, loan, sell, transfer, assign or sublicense its license rights to any other person or entity (other than in compliance with any Licensor relicensing/transfer policy then in force), and LICENSEE acknowledges that any attempted transfer, assignment, sublicense or use shall be void;
- (ii) make error corrections to or otherwise modify, alter or adapt the Product or create derivative works based upon the Product, or permit third parties to do the same;

## APPENDIX D TO DIR CONTRACT NO. DIR-TSO-3390

- (iii) translate, decipher, reverse engineer or decompile, decrypt, disassemble or otherwise reduce the Product to human-readable form, except to the extent otherwise expressly permitted under applicable law notwithstanding this restriction;
- (iv) use or permit the Product to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of Licensor;
- (v) disclose, provide, or otherwise make available trade secrets, proprietary or confidential information contained within the Product in any form to any third party without the prior written consent of Licensor. LICENSEE shall implement reasonable security measures to protect such trade secrets, proprietary or confidential information; or
- (vi) use more Product licenses at any given time than the total quantity in LICENSEE' licensed configuration on file with Licensor

### 3. TITLE

- 3.1 **Product.** LICENSEE acknowledges that title to each Product shall at all times remain with Licensor, and that LICENSEE has no rights in the Product except those expressly granted by this Agreement. LICENSEE agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within any Product or any related materials or Documentation by Licensor.
- 3.2 **Rights in Data.** All data created and/or processed by the Product is and remains the property of LICENSEE and shall in no way become attached to the Product, nor shall Licensor have any rights in or to the data of LICENSEE.

### 4. DELIVERY.

Licensor shall provide LICENSEE with a tangible copy of each Product. Licensor shall deliver the Product(s) by the Delivery Date and method specified in the applicable Product Schedule. Failure to deliver the Product by such date shall give LICENSEE the right to immediately terminate this Agreement as to such Product, and to receive a complete refund of any and all fees paid to Licensor, effective upon notice to Licensor and without any right to cure. Licensor also agrees to supply LICENSEE with a replacement copy of the Product at no charge in the event of loss or damage to the copy originally delivered hereunder.

### 5. MAINTENANCE AND SUPPORT: TERM AND FEES.

- 5.1 **Maintenance and Support Term.** For the period commencing on the date Licensor makes the particular Product available and terminating twelve (12) months thereafter (the “**Initial Maintenance Period**”), Licensor shall provide Maintenance and Support Services as described herein. In the event LICENSEE has let Maintenance and Support lapse, LICENSEE may later elect to reinstate Maintenance and Support Services. LICENSEE may do so by paying Licensor's then current reinstatement fees in effect at the time of the reinstatement. In no event shall Maintenance and Support Services be a condition of any License granted hereunder. The availability of Maintenance and Support Services on each Product licensed hereunder shall be independent of the same services for any other Product.
- 5.2 **Maintenance and Support Fees.** Licensor shall provide the Maintenance and Support Services outlined on Appendix C of DIR Contract No. DIR-TSO-3390 for each Product during the initial twelve (12) months following acquisition of Product by LICENSEE at no additional charge. Following Initial maintenance Period, Annual Maintenance (to include Support Fees) shall be at the posted rate identified in Appendix C of DIR Contract No. DIR-TSO-3390.

### 6. MAINTENANCE AND SUPPORT SERVICES.

Licensor shall provide Maintenance and Support as outlined on Appendix C of DIR Contract No. DIR-TSO-3390.

### 7. DISASTER RECOVERY

- 7.1 **Copies of Licensed Products for Disaster Recovery.** LICENSEE shall have the right to make the minimum, reasonably necessary number of copies of the Product(s) and Documentation that it needs for disaster recovery purposes; back-up purposes; archival purposes, and to install, execute, use, copy, test and/or display any of the Licensed Programs on Disaster Recovery Computers for: (a) the duration of each Disaster; and (b) the purpose of conducting periodic Disaster recovery testing/exercise(s) intended to practice and validate the effectiveness of Disaster recovery plans and/or procedures.
- 7.2 **Copies of Licensed Products and Documentation for Relocation.** It is also understood and agreed that LICENSEE can make the minimum, reasonably necessary number of copies of the Product(s) and Documentation that it needs in connection with the transfer, migration, distribution and/or movement of the Product between hardware that the Product is designed to be installed and/or run on.

## APPENDIX D TO DIR CONTRACT NO. DIR-TSO-3390

- 7.3 **Disaster Recovery Computers.** Disaster Recovery Computers at the Disaster Recovery Site may spin in idle mode and/or may be powered on in standby mode. However, with respect to the Product(s) installed, executed, used, copied, tested and/or displayed thereon: (a) no production workload is permitted on the Disaster Recovery Computers during the Disaster Recovery drill periods; and (b) no other workload is permitted on the Disaster Recovery Computers during no-Disaster and non-Disaster Recovery drill periods.

### 8. **LIMITED WARRANTY: WARRANTY RESTRICTIONS; DISCLAIMER OF WARRANTIES.**

- 8.1 **Limited Warranty.** Subject to the limitations and conditions set forth herein, Licensor warrants that commencing from the date of shipment to LICENSEE and for a period no longer than sixty (60) days: (a) the media on which the Product is furnished will be free of defects in materials and workmanship under normal use; and (b) the Product shall perform in substantial conformity with the Documentation. Except for the foregoing, the Product is provided "AS IS." This limited warranty extends only to the LICENSEE who is the original licensee. LICENSEE's sole and exclusive remedy and the entire liability of Licensor and its distributors or suppliers under this limited warranty will be: (a) the replacement of defective media; and/or (b) at Licensor's option, repair, replacement, or refund of the purchase price of the Product license, in both cases subject to the condition that any error or defect constituting a breach of this limited warranty is reported to Licensor or the party supplying the Product to LICENSEE if different than Licensor, within the 60-day warranty period. Licensor or the party supplying the Product to LICENSEE may, at its option, require return of the Product and/or Documentation as a condition to the remedy. In no event does Licensor warrant that the Product is error free or that LICENSEE will be able to operate the Product without problems or interruptions.
- 8.2 **Warranty Restrictions.** This warranty does not apply if the Product: (a) has been altered, except by Licensor; (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Licensor, (c) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; (d) is licensed for beta, evaluation, testing or demonstration purposes; or (e) any Product for which Licensor does not receive a License Fee.
- 8.3 **Disclaimer of Warranty.** EXCEPT AS SPECIFIED IN THIS WARRANTY SECTION, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY LICENSOR, ITS SUPPLIERS AND LICENSORS. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. THIS WARRANTY GIVES LICENSEE SPECIFIC LEGAL RIGHTS, AND LICENSEE MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

### 9. **DISCLAIMER OF LIABILITIES - LIMITATION OF LIABILITY.** LIMITATION OF LIABILITY SHALL BE HANDLED IN ACCORDANCE WITH APPENDIX A, SECTION 10K OF DIR CONTRACT NO. DIR-TSO-3390.

### 10. **OPEN SOURCE SOFTWARE.** Certain software libraries and other third party software included in the Product are "free" or "open source" software and are subject to separate license terms ("Open Source Software"). Such Open Source Software is distributed WITHOUT ANY WARRANTY, without even the implied warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE. Certain Open Source Software has been or may be made available by Licensor on its web site. Licensor is not obligated to provide any warranty, maintenance, technical or other support for the Open Source or its use in the Product.

### 11. **INFRINGEMENT INDEMNITY.** Indemnification shall be handled in accordance with Appendix A, Section 10A of DIR Contract No. DIR-TSO-3390.

### 12. **FEES/CHARGES.**

- 12.1 **License Fee.** Licensor shall invoice LICENSEE for the License Fee according to Appendix A, Section 8I of DIR Contract No. DIR-TSO-3390.

- 12.2 **Maintenance and Support Fees.** Licensor shall invoice LICENSEE for any applicable Maintenance and Support Fees for each Product sixty (60) days prior to the beginning of the period to which they apply.

## APPENDIX D TO DIR CONTRACT NO. DIR-TSO-3390

- 12.3 **Taxes.** Taxes shall be handled in accordance with Appendix A, Section 8E of DIR Contract No. DIR-TSO-3390.
- 12.4 **Payment.** All payments shall be paid in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-3390.
- 12.5 **Manner of Payment.** In consideration for the Product(s) provided by Licensor hereunder, LICENSEE shall pay Licensor in the manner, and either, (a) the amounts, or (b) the rates, set forth in the relevant Product Schedule. Unless specified otherwise in a Product Schedule, all payments, credits, and invoices shall be in United States ("U.S." or "US") dollars ("\$\$"), ("USD"), ("US\$").
13. **TERM AND TERMINATION.** The Agreement and the license granted herein shall remain effective until terminated per the terms of this Agreement and Appendix A, Section 11B of DIR Contract No. DIR-TSO-3390. Subject to record retention laws and policies, upon termination, LICENSEE shall destroy all copies of Product in its possession or control. All confidentiality obligations of LICENSEE and all limitations of liability and disclaimers and restrictions of warranty shall survive termination of this Agreement.
14. **NOTICES.** All notices shall be handled in accordance with Appendix A, Section 12 of DIR Contract No. DIR-TSO-3390.
15. **ASSIGNMENT.** Assignments shall be handled in accordance with Appendix A, Section 4D of DIR Contract No. DIR-TSO-3390.
16. **GOVERNING LAW.** The Agreement shall be governed as follows:
- 16.1 For U.S. state and local governments and/or higher education schools governed by state laws, contracts shall be governed by the laws of Texas without reference to conflict of laws principles.
- 16.2 Contracts will not be governed by the United Nations Convention on Contracts for International Sale of Goods. This application is expressly excluded.
17. **WAIVER.** The waiver of any of the terms or provisions of this Agreement in any one or more instances shall not be deemed a permanent waiver thereof or a waiver of this entire Agreement. No waiver shall be effective unless in writing signed by the waiving party.
18. **EXPORT CONTROL.** The Product is subject to U.S. export controls, including but not limited to the U.S. Export Administration Regulations (EAR). Licensee agrees that the Product will not be shipped, transferred or exported into any country, or used in any manner prohibited by U.S. export restrictions or controls or any other applicable export laws, restrictions and regulations (collectively "Export Laws"). In addition, if the Product is identified as an export controlled item under Export Laws, Licensee represents and warrants that Licensee and Licensee's authorized users are not located within an embargoed or otherwise restricted nation and that Licensee and Licensee's authorized users are not otherwise prohibited under the Export Laws from receiving the Product. All rights to use the Product are granted on condition that such rights are forfeited if Licensee fails to comply with the terms of this provision. As permitted by applicable law, Licensee will defend, indemnify, and hold harmless Licensor and its licensors from and against all fines, penalties, liabilities, damages, costs, and expenses incurred by Licensor or its licensors as a result of any violation of such laws and regulations of this provision by Licensee or any of Licensee's agents or employees.
19. **LICENSOR'S AUDIT RIGHTS.**
- 19.1 Upon at least thirty (30) days' prior written notice to LICENSEE, and subject to LICENSEE's security requirements, LICENSEE shall allow an audit, at Licensor's expense, of LICENSEE's records that directly relate to LICENSEE's use of the Product, solely for the purpose of determining whether such use is within the scope of the license granted by Licensor to LICENSEE under this Agreement. In no event shall any such audit be conducted more frequently than once every 12 months.
- 19.2 Prior to conducting any such audit, Licensor shall enter into a written agreement with the applicable third party auditor, which agreement shall contain provisions consistent in all material respects with all applicable provisions of this Agreement, including Licensor's confidentiality obligations and LICENSEE's security requirements, and Licensor shall be responsible for such third party auditor's compliance with such agreement.
- 19.3 The audit results shall be jointly reviewed by the parties. In the event LICENSEE and Licensor identify use of the Product during the applicable audit period in excess of that for which LICENSEE is licensed, the parties shall reconcile such excess use at LICENSEE's then-existing fee structure.
20. **ENTIRE AGREEMENT/MODIFICATION.** DIR Contract No. DIR-TSO-3390 and this Agreement and all referenced attachments hereto constitute the entire agreement between the parties pertaining to the subject

## APPENDIX D TO DIR CONTRACT NO. DIR-TSO-3390

matter hereof, and supersede all prior written or oral agreements between the parties. LICENSEE acknowledges that it is not entering into this Agreement on the basis of any representations not expressly contained herein. Any modifications of this Agreement must be in writing and signed by both parties hereto.

- 21. AUTHORITY.** Each Party represents and warrants to the other that it has the right, power and authority to execute, deliver and perform this Agreement.

**IN WITNESS WHEREOF**, LICENSEE and Licensor have caused this Agreement to be executed by their duly authorized representatives.

**Licensee**

**Exelis Visual Information Solutions, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# APPENDIX D TO DIR CONTRACT NO. DIR-TSO-3390

## PRODUCT SCHEDULE # 1 JAGWIRE™ COMMERCIAL OFF THE SHELF SOFTWARE LICENSE AGREEMENT

The Executable Code Licenses granted hereunder shall be effective on the date Licensors makes the Product available to LICENSEE.

Product Name, Description, and Version:	Jagwire v. 2.1.1.1
Additional Product Modules	
License Type & Number of Licenses (ex. Server, CPU, Site, User/Seat based, Named, concurrent. etc.)	TBC
License Fee:	Executable Code License Fee: \$
License Term (IF NOT PERPETUAL)	DD/MM/YYYY to DD/MM/YYYY
Payment Terms	As specified in Section 12.4 Payment
Special Terms and Conditions:	This software is a commercial off the shelf offering and not a work for hire. Any term found to be in conflict with DIR Contract No. DIR-TSO-3390 shall be deemed null and void.
Implementation	
Training:	Training Fees: Initial Training: Included for ____ Users. Subsequent Training: Online Training: Included Onsite Training: _____ per day (<30 User) Offsite Training: _____ per User
Delivery Method	Tangible <input type="checkbox"/> Electronic <input type="checkbox"/> Load & Leave <input type="checkbox"/>
Installation Services	See <b>Attachment B</b> to this Schedule if applicable

NOTE: All fees must be in accordance with Appendix C of DIR Contract No. DIR-TSO-3390.

**IN WITNESS WHEREOF**, LICENSEE and Licensors have caused this Product Schedule to be executed by their duly authorized representatives.

**Licensor**

**Exelis Visual Information Solutions, Inc.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_